



SO ORDERED.

SIGNED this 1 day of July, 2014.

Stephani W. Humrickhouse

Stephani W. Humrickhouse
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE:

CASE NO.:

FAYURIA ANN POPE MOSS,

13-04223-8-SWH

DEBTOR

CHAPTER 13

**ORDER GRANTING
MOTION TO AVOID LIEN
OF MIDLAND FUNDING LLC**

THIS MATTER coming before the Court upon the motion of the Debtor to avoid the lien of Midland Funding LLC and, after proper notice and no party in interest having filed a response or request for hearing, the Court makes the following findings:

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157, and the Court has jurisdiction pursuant to 28 U.S.C. § 151, 157 and 1334.
2. The Debtor filed the motion to avoid a judicial lien pursuant to 11 U.S.C. § 522(f)(1)(A) and N.C.G.S. § 1C-1601.
3. The Debtor filed this case on July 5, 2013.

4. The Debtor is now, and was at the time this case was filed, owner in fee simple of the real property located in Brunswick County with an address of 3519 Grist Creek Wynd, Leland, NC 28451 and a Brunswick County tax identification number of 0052a087 (“the property”).
5. As of the date this case was filed, the fair market value of the property was \$33,500.00 as listed by the Debtor on Schedule A.
6. As of the date this case was filed, the property was the residence of the Debtor, and the Debtor claimed and was entitled to claim exemption in the property of no more than \$35,000.00 pursuant to N.C.G.S. § 1C-1601(a)(1).
7. No objection has been filed regarding the exemptions claimed by the Debtor.
8. Midland Funding LLC was listed as a secured creditor on the Debtor’s Schedule D.
9. Midland Funding holds a judicial lien entered in Brunswick County District Court and docketed with the Brunswick County Clerk of Superior Court (case file number 07 CVD 2646) on April 8, 2008 in the amount of \$9,909.21, with legal interest at the rate of 8.0% per annum from April 8, 2008 and costs in the amount of \$124.79. The balance owing to Midland Funding on the judicial lien as of the date this case was filed was \$14,190.98 as listed by the Debtor on Schedule D.
10. Said judicial lien constitutes a lien upon the property.
11. At the time this case was filed, there was also a prior deed of trust in favor of Conseco Finance Servicing Corp. recorded on April 25, 2000 in Book 1372, Page 1017 of the Brunswick County Registry. As noted in the Order entered by the Court on December 20, 2013 in connection with the Debtor’s motion to determine the

secured status of Green Tree Servicing LLC's claim, the parties stipulated to the Debtor's valuation of the real property. *Doc 38 at 2, FN 1.*

12. According to the Debtor's Schedule D and the proof of claim filed by Green Tree Servicing LLC as the authorized servicing agent of the deed of trust (Court Claim No. 2), the amount owing under the deed of trust on the date the case was filed was \$106,599.73.

13. At the time the case was filed, there was a statutory lien in favor of Brunswick County for real property taxes on the property. According to the proof of claim filed by Brunswick County Revenue (Court Claim No. 4), the amount of the statutory lien at the time the case was filed was \$872.70.

14. As the sum of the judicial lien held by Midland Funding, the deed of trust in favor of Green Tree Servicing, the statutory lien in favor of the Brunswick County Revenue, and the amount of the exemption that the Debtor was entitled to claim if there were no liens on the property [\$14,190.98 (Midland Funding) + \$106,599.73 (Green Tree) + \$872.70 (Brunswick County Revenue) + \$35,000.00 (Exemption) = \$156,663.41] , exceeds the value of the real property by \$123,163.41 [\$156,663.41 – 33,500.00 = \$123,163.41], the judicial lien impairs the Debtor's exemptions and, pursuant to U.S.C. § 522(f)(2)(A), the judicial lien is avoidable to the full extent of said lien.

WHEREFORE, the Court hereby GRANTS the Debtor's Motion to Avoid Lien of Midland Funding LLC and ORDERS that upon the entry of the Debtor's Discharge in this bankruptcy case, that the full extent of the judicial lien entered in favor of Midland Funding LLC on April 8, 2008 (07 CVD 2646, Brunswick County) and docketed with the Clerk of Superior

Court for Brunswick County is avoided and shall have no further force or effect as to the Debtor's real property.

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